

AMENDED IN ASSEMBLY MARCH 15, 2006

AMENDED IN ASSEMBLY AUGUST 18, 2005

**SENATE BILL**

**No. 202**

**Introduced by Senator Simitian**

*(Principal coauthor: Assembly Member Leno)*

*(Coauthors: Assembly Members Benoit and Cohn)*

February 10, 2005

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An act to add Section 638 to the Penal Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 202, as amended, Simitian. Privacy: telephone calling pattern record or list.

Existing law prohibits a telephone or telegraph corporation, with certain exceptions, from making available to any other person or corporation, without first obtaining a residential subscriber's consent in writing, the subscriber's personal calling patterns, including any listing of the telephone or other access numbers called by the subscriber.

Existing law pertaining to the protection of privacy, makes it a crime, punishable by fine or imprisonment or both, with certain exceptions, to wiretap, eavesdrop, or otherwise intercept telephone or telegraph communications without authorization.

This bill would make it a crime, punishable by fine—~~or~~, imprisonment, or both, to purchase, sell, offer to purchase or sell, or conspire to purchase or sell, any telephone calling pattern record or list, as specified, without the written consent of the person making the call—~~and of each person called~~. Because a violation of the bill's provisions would be a crime, this bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 638 is added to the Penal Code, to read:  
2 638. (a) Any person who purchases, sells, offers to purchase  
3 or sell, or conspires to purchase or sell any telephone calling  
4 pattern record or list, without the written consent of the person  
5 making the call ~~and of each person called~~, shall be punished by a  
6 fine not exceeding two thousand five hundred dollars (\$2,500), or  
7 by imprisonment in the county jail not exceeding one year, ~~or by~~  
8 ~~imprisonment in the state prison~~, or by both a fine and  
9 ~~imprisonment in the county jail or in the state prison~~. If the  
10 person has previously been convicted of a violation of this  
11 section, he or she is punishable by a fine not exceeding ten  
12 thousand dollars (\$10,000), or by imprisonment in the county jail  
13 not exceeding one year, or by imprisonment in the state prison, or  
14 by both a fine and imprisonment in the county jail or in the state  
15 prison.  
16 (b) Any personal information contained in a telephone calling  
17 pattern record or list that is obtained in violation of this section  
18 shall be inadmissible as evidence in any judicial, administrative,  
19 legislative, or other proceeding except when that information is  
20 offered as proof in an action or prosecution for a violation of this  
21 ~~section as proof in an action or prosecution for a violation of this~~  
22 ~~section~~.  
23 (c) For purposes of this section:  
24 (1) "Person" includes an individual, business association,  
25 partnership, limited partnership, corporation, limited liability  
26 company, or other legal entity.  
27 (2) "Telephone calling pattern record or list" ~~includes any~~  
28 ~~document or record of the telephone or other access numbers~~  
29 ~~called by any person, or received by any person, means~~

1 *information retained by a telephone company that relates to the*  
2 *telephone number dialed by the customer, or other person using*  
3 *the customer's telephone with permission, or the incoming call*  
4 *number of a call directed to the customer, or other data related*  
5 *to such calls typically contained on a customer telephone bill*  
6 *such as the time the call started and ended, the duration of the*  
7 *call and any charges applied whether the call was made from or*  
8 *to a telephone connected to the public switched telephone*  
9 *network, a cordless telephone, as defined in Section 632.6, a*  
10 *telephony device operating over the Internet utilizing voice over*  
11 *Internet protocol, a satellite telephone, or commercially available*  
12 *interconnected mobile phone service that provides access to the*  
13 *public switched telephone network via a mobile communication*  
14 *device employing radiowave technology to transmit calls,*  
15 *including cellular radiotelephone, broadband Personal*  
16 *Communications Services, and digital Specialized Mobile Radio.*

17 *(d) An employer of, or entity contracting with, a person who*  
18 *violates subdivision (a) shall only be subject to prosecution*  
19 *pursuant to that section if the employer or contracting entity*  
20 *knowingly allowed the employee or contractor to engage in*  
21 *conduct that violated subdivision (a).*

22 *(e) This section shall not be construed to prevent any a law*  
23 *enforcement or prosecutorial agency, or any officer, employee,*  
24 *or agent thereof from obtaining telephone records in connection*  
25 *with the performance of the official duties of the agency*  
26 *consistent with any other applicable state and federal law.*

27 SEC. 2. No reimbursement is required by this act pursuant to  
28 Section 6 of Article XIII B of the California Constitution because  
29 the only costs that may be incurred by a local agency or school  
30 district will be incurred because this act creates a new crime or  
31 infraction, eliminates a crime or infraction, or changes the  
32 penalty for a crime or infraction, within the meaning of Section  
33 17556 of the Government Code, or changes the definition of a  
34 crime within the meaning of Section 6 of Article XIII B of the  
35 California Constitution.